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YEO AH GIAN & ANOR

v.

WAN MOHD ZAIDI WAN NAWANG & ORS

B

HIGH COURT MALAYA, JOHOR BAHRU
VERNON ONG LAM KIAT JC
[SUIT NO: (MT1) 22-1023-2004]
14 JANUARY 2009

C ***LAND LAW:*** *Indefeasibility of title and interests - Fraud - Allegation of - Whether transfer of land procured by fraud of first defendant - Whether second and third defendants privy to alleged fraud - Whether second and third defendants bona fide purchasers of land - National Land Code, s. 340*

D

The plaintiffs' claim was for the transfer of the plaintiffs' land to the second and third defendants to be set aside and cancelled or alternatively for damages to be assessed. The claim was predicated upon the allegation that the first defendant in collusion with one
E Chai Yu Huan fraudulently procured the transfer of the plaintiffs' land to the second and third defendants. Briefly, the plaintiffs were the registered co-proprietors of the land ('the land'). One Cai Yu Huan (the broker) approached the first plaintiff's son (PW3) that her client was interested to purchase the said land for
F RM175,000. The first plaintiff was told by the broker that she would be able to procure the transfer of a piece of building land to the first plaintiff in exchange. The plaintiffs together with PW3 were then taken by the broker to the first defendant's office (a firm of solicitors) for the purpose of drawing up the sale and
G purchase agreement. The first defendant informed the plaintiffs and PW3 that he was the solicitor for the intended buyer who was a Singaporean. It was then agreed that the land was to be sold at the price of RM175,000 out of which the second plaintiff was to accept RM58,000 in full settlement of his share. As for the first
H plaintiff's share, the first defendant and the broker agreed to procure the transfer of another piece of land ('the Malay land') to the first plaintiff's sons at the agreed value of RM117,000. The plaintiffs signed various documents in connection with the sale of the land. However, sometime in January 2003, the plaintiffs
I received a letter from the first defendant terminating the sale and purchase transaction and when contacted about the aborted sale, the broker informed that the intended buyer had to call off the transaction because the buyer was not allowed by law to purchase

the land. Subsequently, the broker informed the plaintiffs that there was an interested buyer and gave cheques to the plaintiffs which were also dishonoured. Thereafter, attempts by the second plaintiff and PW3 to contact the first defendant and the broker were not successful and they could not be located. The first plaintiff lodged police reports. In the meantime, the title in the land was registered in the names of the second and third defendants. It was the plaintiffs' assertion that the first defendant, a solicitor, had colluded with the broker to entice the plaintiffs to execute the documents relating to the sale and transfer of the land and to deposit the original issue document of title with the first defendant. At all material times, the first defendant and the broker had no intention to pay the plaintiffs the purchase price or they ought reasonably to have known that they did not have the ability to pay or cause to be paid to the plaintiffs the purchase price. As against the second and third defendants, the plaintiffs' contention was that the transfer of the land to the second and third defendants was brought about by the fraud of the first defendant. At all material times, the first defendant was acting as the solicitor for the second and third defendants. By virtue of s. 340(2)(a) NLC, the second and third defendants' title or interest in the land was defeasible.

Held (dismissing plaintiffs' claim):

(1) The evidence showed that throughout the whole transaction the first defendant's role was as a solicitor. He prepared the sale and purchase agreement, transfer documentation and was given the title deed by the plaintiffs. At all material times the broker dealt with the plaintiffs and the second and third defendants. The broker had acted as a go-between for the plaintiffs and the second and third defendants. The plaintiffs and the second and third defendants had never met. The second and third defendants paid the purchase price through the broker for which receipts were issued. Following the payment of the purchase price the land was transferred to the second and third defendants. There was no evidence to show or suggest that the first defendant had colluded with the broker. On the contrary, the evidence suggested that the first defendant was merely carrying out his role as a solicitor. As the broker was the go-between the plaintiffs and the second and third defendants, the first defendant apparently acted on the broker's instructions. There was a possibility that a fraud might have been perpetrated on the plaintiffs. However, the

A fact that a possibility existed fell short of proving fraud beyond reasonable doubt. There was no evidence to show that the second and third defendants colluded with the broker. On the contrary, the evidence showed that the second and third defendants were *bona fide* purchasers for value of the land. At
B most, the evidence pointed to a possibility of a fraud perpetrated by the broker independently on the first, second and third defendants. (para 20)

Case(s) referred to:

C *Abu Bakar Ismail & Anor v. Ismail Husin & Ord & Other Appeal [2007] 3 CLJ 97 CA* ***(refd)***
Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC ***(refd)***
Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***
D *Chu Choon Moi v. Ngan Sew Tin [1985] 1 LNS 134 FC* ***(refd)***
Datuk Jagindar Singh v. Tara Rajaratnam [1983] 2 MLJ 196 ***(refd)***
Datuk Tan Leng Teck v. Sarjana Sdn Bhd & Ors [1997] 3 CLJ 421 HC ***(refd)***
Director General of Inland Revenue v. Ee Sim Sai [1976] 1 LNS 21 HC ***(refd)***
E *Doshi v. Yeoh Tiong Lay [1975] 85 FC* ***(refd)***
Goh Hooi Yin v. Lim Teong Ghee & Ors [1990] 2 CLJ 203; [1990] 2 CLJ (Rep) 48 HC ***(refd)***
Goh Hooi Yin v. Lim Teong Ghee & Ors [1990] 3 MLJ 23 ***(refd)***
Hoo Kok Chong & Anor v. Yong Tim [2004] 1 CLJ 265 CA ***(refd)***
F *Lee Cheong Fah v. Soo Man Yoh [1996] 2 BLJ 356 HC* ***(refd)***
Lee Kim Luang v. Lee Shiah Yee [1988] 1 CLJ 619; [1988] 1 CLJ (Rep) 717 HC ***(refd)***
Loke Yew v. Port Swettenham Rubber Co Ltd [1913] AC 491 ***(refd)***
M Ratnavale v. S Lourdenadin [1988] 2 MLJ 371 ***(refd)***
G *Ong Chat Pang & Anor v. Valliappa Chettiar [1971] 1 MLJ 224 FC* ***(refd)***
Perwira Habib Bank (M) Bhd v. Bank Bumiputra (M) Bhd [1988] 3 MLJ 54 ***(refd)***
PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd [1980] 1 LNS 55 FC ***(refd)***
Ratcliffe v. Waiters [1969] 2 NSWR 146 ***(refd)***
H *Robertson v. Keith [1870] 1 VR (E) 11* ***(refd)***
Saminathan v. Pappa [1981] 1 MLJ 121 ***(refd)***
Schultz v. Corwill Properties Pty Ltd [1969] 2 NSWR 576 ***(refd)***
Teh Bee v. K Maruthamuthu [1977] 2 MLJ 7 FC ***(refd)***
Tueh Guat Choo alias Tin Wat Choo v. Cheah Ah Hoe & Yong Pow Meng [1932] MLJ 109 ***(refd)***
I *Vijayaletchimy v. Annamalai Chettiar [1990] 1 LNS 37 HC* ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 91, 92, 114(g)
National Land Code, s. 340(1), (2)(a), (b)
Rules of the High Court 1980, O. 18 r. 12

For the plaintiffs - HK Yoong; Ms/ HK Yoong
For the 2nd & 3rd defendants - Sebastian Cha; M/s Sebastian Cha

Reported by Suhainah Wahiduddin

JUDGMENT

Vernon Ong Lam Kiat JC:

[1] The plaintiffs' claim is for the transfer of the plaintiffs' land to the 2nd and 3rd defendants to be set aside and cancelled or alternatively for damages to be assessed. The claim is predicated upon the allegation that the 1st defendant in collusion with one Cai Yu Huan fraudulently procured the transfer of the plaintiffs' land to the 2nd and 3rd defendants.

Plaintiffs' Case

[2] The plaintiffs were the registered co-proprietors of the land held document of title H.S.(D) 7338 No. P.T.D 87 Mukim of Pantai Timor Daerah Kota Tinggi Negeri Johor ('the Land'). Sometime on or about September 2002 one Cai Yu Huan a.k.a. Chua Giok Kuan ('the broker') approached the 1st plaintiff's son Sam Hoi Koon (PW3). She informed PW3 that her client was interested to purchase the Land for RM175,000. PW3 informed the plaintiffs about the proposal. The 1st plaintiff was not in favour of selling the Land until the broker told her that she would be able to procure the transfer of a piece of building land to the 1st plaintiff in exchange. The plaintiffs together with PW3 were then taken by the broker to the 1st defendant's office (a firm of solicitors) located at No. 113, Jalan Teluk Ramunia, Sungai Rengit for the purpose of drawing up the sale and purchase agreement. The 1st defendant informed the plaintiffs and PW3 that he was the solicitor for the intended buyer who was a Singaporean. It was agreed that the Land was to be sold at the price of RM175,000, out of which the 2nd plaintiff was to accept RM58,000 in full settlement of his share. As for the 1st plaintiff's share, the 1st defendant and the broker agreed to procure the transfer of another piece of land ('the Malay Land') situated near

a mosque in Sungai Rengit town to the 1st plaintiff's sons at the agreed value of RM117,000. The plaintiffs signed various documents in connection with the sale of the Land and deposited the original document of title to the Land with the 1st defendant. The broker then gave the 2nd plaintiff a post-dated cheque for RM58,000. When the said cheque became due on 20 December 2002, the broker told the 2nd plaintiff to defer presenting the said cheque to 24 January 2003. However, sometime in January 2003 the plaintiffs received a letter dated 15 January 2003 from the 1st defendant terminating the sale and purchase transaction and requesting for the return of the said cheque. The said cheque was presented for payment on 25 January 2003 but was returned unpaid for reason "payment stopped".

[3] When contacted about the aborted sale the broker informed that the intended buyer had to call off the transaction because the buyer was not allowed by law to purchase the Land. The broker also informed that as the intended buyer had not signed the sale and purchase agreement she would find a new buyer for it, failing which she would take it for herself. Later the broker informed the 2nd plaintiff and PW3 that she had another client who wanted to buy the Land for the same price. The 2nd plaintiff returned to see the broker and was given two cheques for the total sum of RM58,000. The said cheques were also dishonoured. On or about 7 April 2003 the 2nd plaintiff met up with the broker again. The broker offered to pay RM10,000 in cash and a cheque for RM48,000 but the 2nd plaintiff rejected the offer. At the 2nd plaintiff's insistence they went to the 1st defendant's office where the 1st defendant gave the 2nd plaintiff RM3,000 in cash and a post-dated cheque for RM57,320. The 1st defendant also issued a letter dated 7 April 2003 to the 2nd plaintiff undertaking to honour the said cheque. However, at the end of April 2003 the 1st defendant called the 2nd plaintiff and requested him to defer presenting the said cheque for payment for another day. The cheque was presented for payment on 1 May 2003. On or about 5 May 2003 the 2nd plaintiff learnt that the said cheque was also dishonoured. Attempts by the 2nd plaintiff and PW3 to contact the 1st defendant and the broker were not successful. They later discovered that the 1st defendant's office had closed down. Both the 1st defendant and the broker could not be located. The 1st plaintiff lodged police reports on 6 August 2003 and 4 September 2003. Meanwhile, PW3 had entered into possession of the Malay Land and commenced renovation works on the

house erected thereon. Sometime in August 2003 the owner of the Malay Land accompanied by a lawyer came to see PW3. The visit was followed by a legal notice demanding that PW3 vacate from the Malay Land. In the meantime the title in the Land was registered in the names of the 2nd and 3rd defendants on 6 Jun 2003.

Claim Against 1st Defendant

[4] As against the 1st defendant the plaintiffs' claim is by way of alternative relief in damages for the tort of deceit. No appearance was entered by the 1st defendant. The plaintiffs' assertion is that the 1st defendant, a solicitor had colluded with the broker to entice the plaintiffs to execute the documents relating to the sale and transfer of the Land and to deposit the original issue document of title with the 1st defendant. At all material times the 1st defendant and the broker had no intention to pay the plaintiffs the purchase price or they ought reasonably to have known that they did not have the ability to pay or cause to be paid to the plaintiffs the purchase price.

Claim Against The 2nd And 3rd Defendants

[5] As against the 2nd and 3rd defendants the plaintiffs' contention is that the transfer of the Land to the 2nd and 3rd defendants was brought about by the fraud of the 1st defendant, a solicitor. At all material times the 1st defendant was acting as the solicitors for the 2nd and 3rd defendants. By virtue of s. 340(2)(a) NLC, the 2nd and 3rd defendants' title or interest in the Land is defeasible (cl. 3.1 of the undated sale and purchase agreement and 1st defendant's letter dated 15 January 2003).

[6] It was submitted that when it is established that the agent of a registered proprietor is a party or privy to the fraud, the title of the registered proprietor becomes defeasible under s. 340(2)(a) NLC. It is irrelevant whether the registered proprietor has knowledge or notice of the agent's fraud or authorised the commission of it (*Abu Bakar Ismail & Anor v. Ismail Husin & Ors & Other Appeals* [2007] 3 CLJ 97).

[7] It was also submitted that the 2nd and 3rd defendants were in fact parties to the fraud. In cross-examination the 2nd defendant said that by 'peguam penjual' he meant that the lawyer

acting for the broker from whom they purchased the Land. The 2nd and 3rd defendants were unable to testify to the date or the month when they signed the sale and purchase agreement ('SPA'). The 2nd and 3rd defendants knew that the broker was only a broker and not the owner of the Land. The 2nd and 3rd defendants never met the plaintiffs throughout the transaction. The 2nd and 3rd defendants allegedly paid the purchase price to the broker at such times which were not consistent with the SPA. The 2nd and 3rd defendants failed to produce a credible SPA as the copy produced in court is only a photocopy. In addition the title of the Land was registered in favour of the 2nd and 3rd defendants on 6 Jun 2003 even though the 1st defendant has apparently absconded prior to 5 May 2003.

[8] It was further submitted that the acknowledgement and receipts for payment of the purchase price are documents of no probative value. The said documents were given by the broker who committed the fraud. The signatures appearing in the said documents also plainly differ when compared with that contained in the broker's MBB cheque no. 100759. In addition the alleged payments of RM125,000 and RM50,000 were made in bank notes which were very unusual. The 2nd defendant's explanation that this was the traditional way of buying and selling of land in Sungai Rengit is not supported by any independent third party evidence.

2nd And 3rd Defendants' Defence

[9] The 2nd and 3rd defendants defence is premised upon the following grounds:

(1) That their title as registered proprietors of the Land is indefeasible as provided under s. 340(1) NLC;

(2) They are *bona fide* purchasers for value and that they were not party or parties to the alleged fraud; and

(3) The plaintiffs have failed to prove their case within the first limb of sub-s. (2) of s. 340 NLC.

[10] It was submitted that subject to sub-s. (2) of s. 340 NLC a registered title or interest is indefeasible (*Ong Chat Pang & Anor v. Valliappa Chettiar* [1971] 1 MLJ 224 FC; *Teh Bee v. K. Maruthamuthu* [1977] 2 MLJ 7 FC). The burden is on the plaintiffs to prove that there was fraud. The fraud must be actual fraud and must be brought home to the person whose registered title is impeached or to his agents (*PJTV Denson (M) Sdn Bhd &*

Ors v. Roxy (Malaysia) Sdn Bhd [1980] 1 LNS 55; *Tueh Guat Choo alias Tin Wat Choo (f) v. Cheah Ah Hoe & Yong Pow Meng* [1932] MLJ 109; *Doshi v. Yeoh Tiong Lay* [1975] 85 FC).

[11] It was also submitted that there is no actual fraud because the plaintiffs failed to prove beyond a reasonable doubt that there was in fact an agreement between the plaintiffs and the broker that the Land be sold subject to the condition that the broker pay RM58,000 to the 2nd plaintiff and further to procure the Malay Land for the 1st plaintiff's son. According to the SPA the purchase price for the Land is RM175,000. There is no mention of the alleged arrangements. This is also consistent with the 1st plaintiff's police report dated 6 August 2003 and in the 1st plaintiff's statutory declarations dated 7 May 2003 and 3 November 2003. The plaintiffs' allegation that the SPA differed materially is totally baseless, an afterthought and is inadmissible. (ss. 91 & 92 Evidence Act 1950; *Datuk Tan Leng Teck v. Sarjana Sdn Bhd & Ors* [1997] 3 CLJ 421; *Director General of Inland Revenue v. Ee Sim Sai* [1976] 1 LNS 21). The plaintiffs also failed to call PW3's elder brother who allegedly signed the agreement for the Malay Land and to produce the said agreement. Under the circumstances, the plaintiffs' failure to do so attracted the adverse inference that there was in fact no such oral agreement between the plaintiffs and the broker (s. 114(g) Evidence Act 1965).

[12] The plaintiffs knew that the Land would be sold to the 2nd and 3rd defendants. This is corroborated by the letter of consent from the Pejabat Pengarah Tanah dan Galian, Johor dated 21 February 2003 addressed to the plaintiffs.

[13] In regard to whether the 2nd and 3rd defendants or their agent were parties or privy to the alleged fraud, it was submitted that the plaintiffs have failed to specifically plead the necessary particulars of the alleged fraud or misrepresentation. Accordingly, the plaintiffs should not be allowed to raise this issue in their submission (O. 18 r. 12 Rules of the High Court 1980; V*ijayaletchimy v. Annamalai Chettiar* [1990] 1 LNS 37; *Lee Kim Luang v. Lee Shiah Yee* [1988] 1 CLJ 619; [1988] 1 CLJ (Rep) 717; *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors* [1995] 3 CLJ 639).

[14] Further the plaintiffs have not produced any evidence to implicate the 2nd and 3rd defendants as being party or privy to the alleged fraud. The 2nd and 3rd defendants were not challenged during cross-examination of their involvement in the alleged fraud. According to the plaintiffs' evidence after the initial sale transaction was aborted the plaintiffs agreed to the broker's proposal to find a new buyer failing which she would buy the Land for herself. After the broker found the new buyers (the 2nd and 3rd defendants) the 2nd plaintiff accepted two cheque payments of her share of RM58,000. According to the 2nd and 3rd defendants' evidence the broker approached them and offered to sell the Land for RM175,000 on behalf of the plaintiffs. The full purchase price of RM175,000 was paid to the broker who was authorised to sell and accept the purchase price on behalf of the plaintiffs. The first payment of RM125,000 was made on 6 February 2003 and the second payment of RM50,000 was made on 6 March 2003. Both payments were made in cash to the broker at the broker's office of C & K Commercial Services. The acknowledgement and receipts bearing the signatures of the broker for the said payments were produced in court and admitted in evidence. The 2nd and 3rd defendants are *bona fide* purchasers for valuable consideration of the Land.

[15] Notwithstanding the SPA, the 1st defendant was in fact acting for the plaintiffs and not for the 2nd and 3rd defendants. Firstly, according to PW1's testimony the broker informed her that the broker's solicitor would conduct the matter for both the buyer and seller (para. 7, PW1 witness statement). Secondly, the 2nd and 3rd defendants did not pay any legal fees to the 1st defendant since they were informed that the fees were included in the purchase price. The transfer documents had already been signed by the plaintiffs prior to being executed by the 2nd and 3rd defendants. Thirdly, according to PW1's police report dated 6 August 2003 the 1st plaintiff said "Pembeli diwakili peguamnya sendiri".

Indefeasibility Of Title Under S. 340 NLC

[16] According to s. 340(1) NLC, a title which is registered is indefeasible in that it is free of all adverse claims or encumbrances not noted on the register. The indefeasibility of title is, however, not absolute. It may be set aside under the following circumstances prescribed under s. 340(2) NLC.

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

What Is Fraud?

[17] The plaintiffs' case is that the 1st defendant had caused or allowed to be transferred the Land to the 2nd and 3rd defendants fraudulently. For the purposes of vitiating title to land under s. 340 NLC the fraud must be actual fraud. What is fraud? As the range of fraud is infinite, it is impossible to lay down a complete and comprehensive definition of fraud. Examples of actual fraud may be found in decided cases. Actual fraud is where one person causes pecuniary injury to another by intentionally misrepresenting or concealing a material fact which from their mutual position he was bound to explain or disclose. If a person by intentional misrepresentation or concealment of a material fact peculiarly within his knowledge induces another person to enter into a contract, conveyance or similar transaction with him, which he would not have entered into had he known the truth, the contract or other transaction is fraudulent (*Jowitt's Dictionary of English Law* 2nd edn). In order to render an indefeasible title defeasible it is necessary to prove actual fraud (see *Perwira Habib Bank (M) Bhd v. Bank Bumiputra (M) Bhd* [1988] 3 MLJ 54). In this context actual fraud means dishonesty of some sort where the designed object of a transfer is to cheat a person of an existing right or whether by a deliberate and dishonest act a person is deprived of his existing right (see *Datuk Jagindar Singh v. Tara Rajaratnam* [1983] 2 MLJ 196; *Loke Yew v. Port Swettenham Rubber Co Ltd* [1913] AC 491 and *Robertson v. Keith* [1870] 1 VR (E) 11). The fraud must be that of the registered proprietor or his privy. The fraud of an agent will affect the principal who is the registered proprietor unless the agent acted outside his authority (*Schultz v. Corwill Properties Pty Ltd* [1969] 2 NSWR 576; *Ratcliffe v. Waiters* [1969] 2 NSWR 146).

A **Fraud - Standard Of Proof In Civil Proceedings**

[18] The existence of fraud is a question of fact. It is dependent upon the circumstances of each particular case as stated by the Federal Court in *PJTV Denson (M) Sdn Bhd & Ors v. Roxy* B *(Malaysia) Sdn Bhd* [1980] 1 LNS 55. Raja Azlan Shah CJ (Malaya) (as HRH then was) said:

> Whether fraud exists is a question of fact, to be decided upon the circumstances of each particular case. Decided cases are only illustrative of fraud. Fraud must mean "actual fraud, ie, dishonesty C of some sort" for which the registered proprietor is a party or privy. "Fraud is the same in all courts, but such expressions as 'constructive fraud' are ... inaccurate;" but "'fraud' ... implies a wilful act, on the part of one, whereby another is sought to be deprived, by unjustifiable means, of which he is entitled." (per D Romilly MR in *Green v. Nixon*). Thus in *Waimiha Sawmilling Co. Ltd v. Waione Timber Co. Ltd.* it was said that "if the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent ...

[19] In this case the onus is upon the plaintiff to establish the E alleged fraud. The standard of proof is that of proof beyond reasonable doubt (see *Saminathan v. Pappa* [1981] 1 MLJ 121; *M Ratnavale v. S Lourdenadin* [1988] 2 MLJ 371; and *Goh Hooi Yin v. Lim Teong Ghee* [1990] 2 CLJ 203; [1990] 2 CLJ (Rep) 48). Proof beyond reasonable doubt does not, however, mean F proof beyond the shadow of doubt. The degree of proof must carry a high degree of probability so that on the evidence adduced the court believes its existence or a prudent man considers its existence probable in the circumstances of the particular case. If such proof extends only to a possibility but not in the least a G probability, then it falls short of proving beyond reasonable doubt (see *Chu Choon Moi v. Ngan Sew Tin* [1985] 1 LNS 134 SC; *Lee Cheong Fah v. Soo Man Yoh* [1996] 2 BLJ 356; *Goh Hooi Yin v. Lim Teong Ghee & Ors* [1990] 2 CLJ 203; [1990] 2 CLJ (Rep) 48). Learned counsel for the plaintiffs submitted that the standard H of proof of proving fraud is only that of on balance of probabilities citing *Hoo Kok Chong & Anor v. Yong Tim* [2004] 1 CLJ 265 and *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* [2001] 2 CLJ 133. In *Adorna Properties*, *supra*, the Federal Court held that the standard of proof for forgery in a civil case is that of a balance of I probabilities within the context of s. 340(2)(b) NLC. The decision of the Court of Appeal in *Hoo Kok Chong*, *supra* may be distinguished as the Court of Appeal adopted the *Adorna Properties* standard of proof for forgery.

Findings Of The Court

[20] The evidence shows that throughout the whole transaction the 1st defendant's role was as a solicitor. He prepared the sale and purchase agreement, transfer documentation and was given the title deed by the plaintiffs. At all material times the broker dealt with the plaintiffs and the 2nd and 3rd defendants. In this regard the evidence shows that the broker acted as a go-between for the plaintiffs and the 2nd and 3rd defendants. The plaintiffs and the 2nd and 3rd defendants never met. The 2nd and 3rd defendants paid the purchase price through the broker for which receipts were issued. Following the payment of the purchase price the Land was transferred to the 2nd and 3rd defendants. There is no evidence to show or suggest that the 1st defendant colluded with the broker. On the contrary the evidence suggests that the 1st defendant was merely carrying out his role as a solicitor. As the broker was the go-between for the plaintiffs and the 2nd and 3rd defendants, the 1st defendant apparently acted on the broker's instructions. On the totality of the evidence adduced, there is a possibility that a fraud might have been perpetrated on the plaintiffs. However, the fact that a possibility exists falls short of proving fraud beyond reasonable doubt. There is no evidence to show that the 1st defendant colluded with the broker against the plaintiffs. There is also no evidence to show that the 2nd and 3rd defendants colluded with the broker. On the contrary the evidence shows that the 2nd and 3rd defendants are *bona fide* purchasers for value of the Land. Applying the principles enunciated in the authorities above, the court is not satisfied that standard of proof has not been met. At most the evidence points to a possibility of a fraud perpetrated by the broker independently of the 1st, 2nd and 3rd defendants. For the foregoing reasons the answers to the issues framed by the parties are as follows:

(1) Whether the transfer of the Land to the 2nd and 3rd defendants was procured by fraud of the 1st defendant?

There is no evidence to substantiate the allegation that the transfer of the Land was procured by fraud of the 1st defendant.

(2) Whether the 2nd and 3rd defendants were parties or privy to the fraud?

A There is no evidence to show that the 2nd and 3rd defendants were parties or privy to the alleged fraud.

(3) Whether the 2nd and 3rd defendants were *bona fide* purchasers of the Land and for valuable consideration?

B The 2nd and 3rd defendants were *bona fide* purchasers of the Land for valuable consideration.

[21] Accordingly the plaintiffs' claim is hereby dismissed with costs.

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